IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

CRL.A.No. 1101 of 2006()

ST.65/2001 of CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA
.....

APPELLANT: COMPLAINANT

SURESH KUMAR,
PARAPPURATHU HOUSE, PATHIRAPPALLY,
ALAPPUZHA.

BY ADV. SRI.A.KRISHNAN

RESPONDENTS: STATE & ACCUSED
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1. PERLY BERLY,
PALLIPARAMBIL HOUSE, KATOOR P.O.,
ALAPPUZHA.

2. THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY P.P.SRI.S.DILEEP FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 1101 of 2006

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Dated this the 7th day of February, 2007

JUDGMENT

When application for early posting of the appeal came up for orders, the appeal itself is heard and disposed of.

2. The appellant was the complainant and the 1st respondent was the accused in S.T.No.65/2001 of the Court of the Chief Judicial Magistrate, Alappuzha. The complaint was filed against the 1st respondent under section 138 of the Negotiable Instruments Act. The above case was posted to 19-9-2002 for evidence and on that day the appellant was absent and an application for exemption was filed. The contention of the appellant is that without considering the application, the trial court acquitted the 1st respondent under section 256(1) Cr.P.C.

2. A reading of the impugned order would show that on 19-9-2002 the appellant absent and an application for exemption was filed for excusing his absence, but without assigning any reason that application was rejected. That apart the impugned order is not in accordance with the provisions of section 256 of the Cr.P.C. and against the principles laid down by this Court in two decisions reported in Don Bosco V. Partech Computers Ltd. (2005(2) KLT 1003) and G.F.S.Chits & Loans (P) Ltd. V. Rajesh (2006(3) KLT 825).

Hence, the judgment under appeal is set aside and the matter is remanded to the trial court for fresh consideration.

The appeal is allowed as above.

The parties may appear before the trial court on 8th March, 2007.

K.Thankappan,
Judge.

mn.

K. Thankappan,J.

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Crl.A.No. 1101 /2006

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Judgment

7-2-2007